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March 8, 1996

William F. Caton, Acting, Secretary
Federal Communications Commission
Washington, DC 20554

**Re: Report of Ex Parte Communication
MM Docket Nos. 92-266, 93-215**

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to report that *ex parte* meetings were held on March 7, 1996, attended by the following persons:

Office of the Chairman

Jackie Chorney, Esq.

Office of Commissioner Chong

Jane E. Mago, Esq.

Suzanne Toller, Esq.

Cable Television Services Bureau

Gregory Vogt, Esq.

Gary M. Laden, Esq.

Julia Buchanan, Esq.

Lynn Crakes, Esq.

Nancy Stevenson, Esq.

Mr. Edward C. Gallick

Representatives of the Community Broadcasters Association ("CBA")

Sherwin Grossman, President of CBA and of WJAN-LP, Miami, FL

Ronald Bruno, Secretary of CBA and of low power TV stations

in Pennsylvania, Ohio, and West Virginia

Michael Sullivan, Executive Director of CBA

Salvador Serrano, TV-58 (Asiavision), Greenbelt, MD

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OFFICE OF SECRETARY

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Ramon Korionoff, TV-58 (Asiavision), Greenbelt, MD

Peter Tannenwald, Counsel to CBA

Elizabeth A. Sims, on behalf of CBA

In addition, Mr. Sherwin Grossman, President of CBA, met on March 8, 1996, with Maureen O'Connell of Commissioner Quello's staff and Catherine J. K. Sandoval, Chief of the Office of Business Communication Enterprises.

CBA is the trade association of the nation's low power television ("LPTV") stations. At these meetings, CBA representatives discussed positions that CBA has advocated in support of petitions for reconsideration in the above-referenced rule making proceedings, dealing with rates for leased access to cable channels and the ability of cable television operators to raise Cable Programming Services tier rates when adding an LPTV station under the Commission's "Going Forward" rules.

With regard to leased access to cable channels, CBA stated that there is substantial demand for leased access by non-must carry LPTV stations, but there has been little leasing in practice because the rates permitted by the existing rules are beyond the means of low power TV stations wishing to lease channels. The absence of leasing activity must not be construed as an absence of demand. Further, there have been few, if any, complaints from the LPTV industry, because the rates quoted by cable operators, while unreasonably high, have in most cases been lawful within the scope of the rules as now written, thus leaving no basis for a complaint. The absence of leasing activity and complaints should not be construed as any satisfaction or acquiescence in the present rules by LPTV operators. On the contrary, CBA believes that the existing rules do not comply with the statutory requirement that the maximum rates established by the Commission be "reasonable," as that word is defined in any standard dictionary.

It is CBA's view that leased access rates cannot be deemed to meet the statutory standard of reasonableness unless they result in significant leasing activity in the marketplace. Further, the activity of leasing by an LPTV station normally involves a locally-owned small business enterprise negotiating against a multi-billion dollar corporation with nationwide or worldwide interests. In this situation, the Commission should not be unduly concerned about the statutory language indicating that rate regulation should not cause economic harm to cable operators. The burden should be on a cable company to demonstrate that a regulated rate ceiling will cause it significant harm; and the standard for showing harm should be similar to that imposed on parties seeking remission from Commission forfeitures, including disclosure of tax returns, audited financial statements, and amounts paid to owners.

A regulatory scheme that involves calculation of lost opportunity costs and technical and administrative costs associated with leasing is likely to be too complex for most lay

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businesspeople to understand and is likely to be manipulated by sophisticated cable companies to their advantage, resulting in another market failure of the leasing process and/or a flood of complaints that will strain the Commission's resources as badly as they have been strained by CPS tier rate complaints during the past two years. Mr. Bruno noted a situation where he was charged for the same administrative costs 14 times where a single employee supervised 14 cable headends. The Commission should set a straightforward low beginning flat rate, either uniform nationwide or in just a few categories depending on the status of the cable system. The initial rate need not be ideal, because if it is too low and demand for leased access exceeds supply, then the Commission may allow the marketplace to bid rates up to the point where there is equilibrium between supply and demand. In that situation, however, channel lessees that are vertically integrated or otherwise affiliated with the cable system should not be permitted to bid up the rate. If the initial rate is too high, on the other hand, there will be no leasing activity, and further regulatory intervention will be required.

If the Commission adopts rules that require a determination of various costs, cable operators should be required to base their calculations on their least profitable channels, regardless of which channels they actually designate for leasing purposes. That approach will result in leasing activity most likely improving a cable operator's profit picture, thereby affording a positive incentive for leasing.

Further, cable operators should be required to respond to requests for leased access with a clear offer of any available capacity and a lawful rate quote within a short period of time, not more than 30 days. Cable operators who are dilatory in responding or who impose unduly delay in making leased access available should face monetary forfeitures large enough to deter that kind of conduct.

With regard to the "Going Forward" rules, CBA representatives urged that the Commission grant the petition for reconsideration filed by Engle Broadcasting and supported by CBA, which would allow cable operators to raise their subscriber rates by 20 cents if they add a local low power TV station that do not have must-carry rights, without regard to the existing cap of six additional signals. The number of low power TV stations that may be added should not be limited, and cable systems should not be able to transfer low power stations already being carried to the new arrangement. There should be no restriction on the tier on which an LPTV station may be carried, except perhaps for premium tiers. CBA noted that the de-regulation of cable rates by the Telecommunications Act of 1996 signifies a change of attitude by Congress and should eliminate concerns by the Commission that allowing rate increases for adding local low power TV stations might be contrary to Congressional intent.

CBA noted that adoption of the Engle proposal would further the Congressional encouragement for cable carriage of local LPTV stations. Representatives of TV-58 noted

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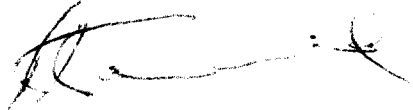
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that it would also bring minority-oriented programming to the public which is now not being shown on cable because of cable's refusal to carry LPTV stations such as TV-58. Finally, CBA urged that the Commission give priority to this matter and act on it promptly.

Two copies of this letter are being furnished for each of the two referenced dockets.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter Tannenwald", with a long horizontal flourish extending to the right.

Peter Tannenwald
Counsel for the Community
Broadcasters Association

cc: All meeting participants
Mr. Paul Engle